

5 FAM 430 RECORDS DISPOSITION AND OTHER INFORMATION

*(CT:IM-134; 09-04-2012)
(Office of Origin: A/GIS/IPS)*

5 FAM 431 GENERAL

5 FAM 431.1 Purpose

(CT:IM-133; 07-31-2012)

- a. This subchapter covers the disposition of the Department's records and other information generated in the course of Department business, regardless of media or format. These actions include transfer to:
 - (1) Department's Records Service Center;
 - (2) A Federal Records Center;
 - (3) Another agency, and
 - (4) The National Archives for permanent records.
- b. It also covers the disposition of records by retirement and the destruction of temporary records and other information. This subchapter does not cover the Department's obligations to preserve records and other information pursuant to litigation holds or other legal holds.

5 FAM 431.2 SCOPE

(CT:IM-133; 07-31-2012)

The Department's records disposition policy applies to all "workforce members" as that term is defined in 5 FAM 463.

5 FAM 431.3 AUTHORITIES

(CT:IM-134; 09-04-2012)

The legal authorities for the disposition of Department records include:

- (1) The Federal Records Act, 44. U.S.C. 31;
- (2) *36 CFR 1220*, Records Management;

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- (3) OMB Circular A-130, Management of Federal Information Resources;
- (4) GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 8, Records Management ;
- (5) Personnel Records, 5 CFR 293, and Guide to Personnel Recordkeeping;
- (6) The Federal Rules of Civil Procedure (in particular, Rules 26, 33, 34, 37 and 45), regarding the Department's obligation with regard to discovery in connection with civil litigation;
- (7) The Federal Rules of Criminal Procedure (in particular, Rules 6 and 16), regarding the Department's obligations with regard to discovery in criminal proceedings; and
- (8) Equal Employment Opportunity Commission (EEOC) Regulations at 29 CFR 1614.108(c), which require all Federal agency employees to comply with requests for information relevant to an Equal Employment Opportunity (EEO) complaint at the investigation stage, and the EEOC regulations at 29 CFR 1614.109(d) that empower the Administrative Judge with the authority to order discovery at the hearing stage.
- (9) Merit System Protection Board (MSPB) Regulations at 5 CFR 1201.73(d) require all Federal agency employees to comply with requests for discovery relevant to an appeal to the MSPB.
- (10) Foreign Service Grievance Board (FSGB) Regulations (see, for example 22 CFR 903.6) govern the Department's obligations with regard to discovery in grievances before the FSGB.
- (11) Federal Labor Relations Authority (FLRA) statute at 5 U.S.C. 7114 governs the Department's obligation to produce certain information to the request of a union.

5 FAM 431.4 DEFINITIONS

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Discovery: Discovery is the process used by a party in a legal proceeding to obtain relevant information, or information reasonably calculated to lead to the discovery of relevant information, held solely by the opposing party that is relevant to the proceeding. Responses to discovery requests require identifying, locating, securing and producing information and materials responsive to the discovery request. The term "discovery" is also commonly used to describe the process of reviewing all materials that may be potentially relevant to the issues at hand and/or that may need to be disclosed to other parties, and of evaluating evidence to prove or disprove facts, theories or allegations.

Disposition: The actions taken regarding records no longer needed in current office space. These actions include transfer to the Records Service Center

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or the Washington National Records Center, transfer to another federal agency, transfer of permanent records to the National Archives, and destruction of temporary records.

Legal Hold: A suspension of disposition action(s) of records and the imposition of an obligation not to destroy, alter, modify, or transfer records or other materials whether paper or electronic, that do not fall within the definition of records because of legal, audit, investigative, or other needs.

Litigation Hold: A suspension of disposition action(s) of paper and ESI following the commencement of a legal proceeding or due to the reasonable anticipation of litigation, and the imposition of an obligation not to destroy, alter, modify, or transfer records or other materials, whether paper or electronic, that do not fall within the definition of records. Records that may be responsive to a discovery request, regardless of physical location, are required to be kept for as long as a hold is in place. A litigation hold is one type of legal hold.

Record: All books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the U.S. Government or because of the informational value of the data they contain. (Documents may be subject to a legal hold even if they do not meet the definition of "record.")

Workforce Member: As defined in 5 FAM 463.

5 FAM 431.5 DISPOSITION TYPES

(CT:IM-133; 07-31-2012)

- a. The Federal Records Act of 1950, as amended (44 U.S.C. 3301-3303a, 44 U.S.C. 3308-3314) establishes the basis for the disposition of records and sets forth procedures for obtaining necessary authorization which are discussed below and in 5 FAH-4 H-310.
- b. The disposition of records encompasses one or more of three types of actions: transfer, retirement, and destruction of temporary records.
- c. Materials preserved for convenience of reference are excluded from the legal definition of "records." Disposition of such material is prescribed in 5 FAH-4 H-216.
- d. No Department workforce member may remove, retire, transfer, or destroy records in the custody of the Department except in accordance with 5 FAM 400 and 5 FAH-4 H-310, Records Disposition Schedules, and in accordance with any pending litigation holds or any other legal holds.

5 FAM 432 RECORDS TRANSFER

5 FAM 432.1 GENERAL TRANSFERS

(CT:IM-133; 07-31-2012)

- a. Official files may be transferred within the Department or any of its components due to changes of organization, function, diplomatic or consular jurisdiction, personnel reassignments, relocation of individuals resident abroad, or end user needs, with the agreement of the offices involved.
- b. Workforce members must follow records disposition procedures in 5 FAH-4 H-317 to transfer records. The Records and Archives Management Division (A/GIS/IPS/RA) must be notified of each transfer by memorandum, telegram, or email.
- c. When transferring classified records, all workforce members must follow the security standards contained in 12 FAM and must never remove classified materials from government custody.
- d. Prior to the transfer of records to the National Archives classified records are reviewed by the Systematic Review Program Office (A/GIS/IPS/SRP). See the Systematic Review Program site for information pertaining to a declassification review.
- e. Permanent electronic records eligible for transfer to the National Archives and Records Administration (NARA) must be coordinated through A/GIS/IPS/RA and meet the required transfer requirements as set by NARA. Bureaus and offices are responsible for seeing that their records are in the appropriate format and ready for transfer as per the disposition schedule.
- f. Certain permanent electronic records may be pre-accessioned into NARA to safeguard the records. In such cases the Department maintains legal ownership of the records. Declassification of classified records will be coordinated with NARA (5 FAH-4 H-313).
- g. For permanent electronic record systems that are being decommissioned the records must either be migrated to a system that can maintain them, or pre-accessioned to NARA.
- h. The Department Records Officer (A/GIS/IPS/RA) approves all record transfer agreements to the National Archives of the United States. See (5 FAH-4 H-313).

5 FAM 432.2 JURISDICTION TRANSFERS

(CT:IM-133; 07-31-2012)

When jurisdiction over diplomatic and consular functions is transferred from one post to another, records must be transferred to the new post that is required to carry on the inherited function. This may result from a post opening, closing, or changing status, or the realignment of consular districts. This must also be done when liquidating the affairs of a closed post. The Post Records Coordinator stationed at the post originally holding the records is responsible for this transfer. Post Records Officers may contact A/GIS/IPS/RA for instructions, prior to making the transfer.

5 FAM 432.3 INTERAGENCY TRANSFERS

(CT:IM-133; 07-31-2012)

- a. A/GIS/IPS/RA must be notified by memorandum, telegram, or email (records@state.gov) of a transfer of records to or from other Federal agencies in accordance with Presidential Order, Federal statute, or Presidential reorganization plan.
- b. A/GIS/IPS/RA must approve any other interagency transfers. Other agency requests must be received in writing and signed by a responsible official of the requesting agency. A/GIS/IPS/RA must also obtain approval from the NARA.

5 FAM 432.4 TRANSFERS BY WORKFORCE MEMBERS BETWEEN DEPARTMENT OFFICES AND POSTS

(CT:IM-133; 07-31-2012)

- a. Department workforce members must not take official files with them when they are reassigned to the field from the Department, to the Department from the field, or between posts unless the records transfer has been approved by A/GIS/IPS/RA.
- b. Personal papers, of Department or Foreign Service workforce members, must be transferred only after the Management Officer (MO) approves.
- c. Extra or information copies of documents that are not a part of the official files and used by an office for precedent or background purposes in performing its duties may be transferred after review by the Management Officer. Requests should be coordinated through the Bureau/Post Records Coordinator. The MO review determines that the removal of the copies will not:
 - (1) Diminish the records of the Department;
 - (2) Violate confidentiality required by national security, privacy or other restrictions on disclosure (e.g. commercial or financial information,

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personnel files or investigatory records);

(3) Exceed normal administrative economies (a request can be denied if overly burdensome).

- d. Departing workforce members (those terminating employment with the Department) may not remove any Department records. (See 5 FAH-4 H-217 procedures on the removal of personal papers and non-record material by departing workforce members.)

5 FAM 432.5 SAFE HAVEN TRANSFERS

(CT:IM-133; 07-31-2012)

When possible, in an emergency, the Post Records Coordinator should transfer records for safekeeping (safe haven) to the Department. Posts may also safe haven records to a nearby post deemed appropriate. The decision whether and where to safe haven should be based on post's situation and length of time records will remain at the safe haven site. (See 5 FAH-4 H-315.2-4 through 5 FAH-4 H-315.2-6).

5 FAM 433 RECORDS RETIREMENT

(CT:IM-133; 07-31-2012)

- a. All offices, posts, and field offices must develop an active, continuing retirement program to achieve economies and efficiencies of operations. Retiring records in accordance with approved records disposition schedules will result in freeing costly and limited office space and will free filing equipment to maintain current files and to ensure security of classified records.
- b. Offices and posts must retire records (except official personnel records) to the Records Service Center (RSC) (A/GIS/IPS/RA/RSC) in accordance with the records disposition schedules issued by A/GIS/IPS/RA and approved by NARA, pending ultimate transfer to the National Archives or a Federal Records Center. Offices and posts shall not retire records that are eligible for disposal in less than one year (see 5 FAH-4 H-318.3).
- c. Some Department bureaus, posts and field offices are authorized to retire records directly to a Federal Records Center. (See also 5 FAM 434.1 d).
- d. Top Secret documents (TS), should be reviewed and downgraded prior to being retired to the RSC. However, posts may not downgrade the TS documents of other agencies. For those few TS documents that cannot be downgraded to Secret, posts must retire the TS documents by sending them to the RSC by diplomatic pouch. Questions about downgrading or declassification should be sent to classification@state.gov on OpenNet or classification@state.gov on CLASSNET.

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- e. Eliminate records eligible for immediate disposal under approved schedules and non-record material before retiring the remaining records. In the event that records and non-record material is the subject of a legal or litigation hold, such information is not eligible for disposal and must be preserved.
- f. At posts where suitable storage space is available, the MO may establish a records storage area under the control of the Information Program Unit for semi-active files prior to their eligibility for disposal or retirement to the Department.
- g. All Department offices, including field offices and post sections must retire records using form DS-693, Records Retirement Transmittal. For instructions on preparing records for retirement see 5 FAH-4 H-318.4). Additional information on "How to" retire records may be found on the Records Management Website.
- h. All official personnel folders of inactive State and other agency (except Department of Commerce) Locally Employed (LE) staff must be retired to HR/EX/RIM. The retirement of these records must follow the procedures located on the Records Management Website on OpenNet. Additional information about the procedures can be obtained by contacting HR/EX/RIM.
- i. Inactive personal services contracts of State workforce members are deemed part of the Official Personnel Folders and are to be handled as such. Additional information about the retirement of these records can be obtained by contacting HR/EX/RIM, and on the Records Management Website on OpenNet.
- j. HR/EX/RIM retires inactive official personnel files to the National Personnel Records Center in St. Louis, Missouri (see 3 FAH-1 H-2352.5).

5 FAM 434 RECORDS DESTRUCTION

(CT:IM-133; 07-31-2012)

- a. Workforce members must not destroy records, except in accordance with records disposition schedules issued by A/GIS/IPS/RA and approved by the National Archives and Records Administration (44 U.S.C. 3301). Only records designated as "temporary" in a records disposition schedule and non-record copies can be destroyed.
- b. Prior to destruction, workforce members must determine that the retention of any record has not been extended due to court order, investigation, litigation, or other administrative purpose. In those cases where a legal or litigation hold is in place, the records must not be destroyed until the hold is lifted. In addition, all Freedom of Information requests or other access requests must be searched before destruction. If such requests are pending, the records must not be destroyed.
- c. The Domestic Bureaus have custodianship of functional and geographic area records and will be responsible for authorizing destruction for temporary Post

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retired records.

- d. The Bureau Executive Officers or the Bureau Records Coordinator, upon concurrence by the records' custodian or business owners, will authorize destruction for temporary domestic retired records.
- e. Workforce members must contact A/GIS/IPS/RA to obtain authorization to destroy records not covered by any schedules (See 5 FAH-4 H-315).
- f. A/GIS/IPS/RA coordinates with domestic offices the destruction of temporary records retired to the RSC or a Federal Record Center.
- g. Fines, imprisonment or both may be imposed for the willful and unlawful removal or destruction of records (See 5 FAM 413a(6)(b)). These penalties do not apply to the removal or destruction of non-record material, but other penalties may be imposed for the willful and/or unlawful destruction of documents, even if not a record, that are subject to a litigation hold or other legal hold.

5 FAM 434.1 METHODS OF DESTRUCTION

(CT:IM-133; 07-31-2012)

- a. All classified and administratively controlled records, including sensitive unclassified records, as defined in 12 FAM , must be destroyed in accordance with the provisions of the security regulations (see 12 FAM). Security regulations alone do not constitute authority for the disposal of records; they only prescribe the methods of destruction.
- b. All other unclassified material authorized for destruction can be disposed of or sold as waste/recyclable paper.

5 FAM 434.2 EMERGENCY DESTRUCTION

(CT:IM-133; 07-31-2012)

- a. The procedures for emergency destruction of records at a post are contained in 5 FAH-4 H-315.2.2, 12 FAH-1 (Emergency Planning Handbook), and the post's approved Emergency Action Plan (EAP). During an emergency, post's approved EAP and 12 FAH-1 take precedence over other Department records management policies and programs.
- b. If an emergency or crisis exists, destruction is authorized in accordance with instructions governing emergencies and evacuations (see 12 FAH-1 and the post's EAP). When records are destroyed under emergency conditions, notify A/GIS/IPS/RA, via memorandum, telegram, or email providing the following information:
 - (1) Estimate of volume of records destroyed;
 - (2) Description of records, including subject matter, type of records, inclusive

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dates, security classification; and

(3) Circumstances under which destruction took place.

- c. The post's Emergency Action Plan must take into consideration the possible destruction needs of all U.S. Government agencies at post. In a crisis situation the priorities of destruction as enumerated in 12 FAH-1 will govern the precedence of destruction and the use of all agencies' destruction equipment. Only the Chief of Mission or the senior officer in charge decides when a post's classified or unclassified record holdings will either be reduced or totally destroyed.

5 FAM 435 RECORDS DECLASSIFICATION

(CT:IM-134; 09-04-2012)

The policy and guidelines for declassification of records including systematic and mandatory review are found in 12 FAM and 5 FAM 480. All records, regardless of media, that are eligible for transfer and accessioning into the National Archives are subject to a systematic review for purposes of downgrading or declassification prior to transfer. A/GIS/IPS/SRP *conducts this review*.

5 FAM 436 THROUGH 439 UNASSIGNED

(TL:IM-19; 10-30-1995)